

STATE OF MICHIGAN
COURT OF APPEALS

PFIZER, INC.,

Plaintiff-Appellant,

V

DEPARTMENT OF TREASURY,

Defendant-Appellee.

UNPUBLISHED
February 14, 2012

No. 301632
Court of Claims
LC No. 09-000004-MT

Before: BECKERING, P.J., and OWENS and SHAPIRO, JJ.

PER CURIAM.

Plaintiff appeals as of right from the Court of Claims' order denying plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10) and granting summary disposition for defendant pursuant to MCR 2.116(I)(2). The issue is whether plaintiff properly subtracted certain revenue when calculating its Single Business Tax (SBT). We reverse because plaintiff provided affidavits showing that all of the subtracted income was attributable to royalty payments, and defendant provided no evidence to the contrary.

I. BACKGROUND

Plaintiff is a research-based global healthcare pharmaceutical company. Pfizer Pharmaceuticals, Inc. ("PPI") is a wholly owned, Puerto Rico-based subsidiary that uses patents developed by plaintiff in its manufacturing operations. During the years 2000-2002, plaintiff was subject to the SBT, a value added tax imposed on any person undertaking business activities in the state of Michigan. In order to calculate its SBT liability, plaintiff was required to begin with a tax basis equal to its federal taxable income, and then subtract any relevant adjustments listed in the SBT Act. One such adjustment required the subtraction of all royalty income.

For the years at issue, plaintiff calculated its royalty income by applying a "profit split" methodology used in federal tax law as an alternative to calculating federal "intangible property income." Under the profit split method, 50 percent of a subsidiary's profits are deemed to be intangible property income to the parent company. From the year 2000 to the year 2002, plaintiff claimed 50 percent of PPI's profits as royalties for the purposes of its SBT base.

In 2006, defendant Department of Treasury conducted an audit of plaintiff for the years 2000-2002. At the conclusion of the audit, the department disallowed the subtractions and issued an Intent to Assess against plaintiff for the resulting additional SBT plus statutory interest, for a

total liability of \$1,322,762.02. Plaintiff requested an Informal Conference with defendant's Hearings division which adopted its hearing officer's recommendation to approve the audit's conclusions.

The department concluded that the income plaintiff subtracted from its SBT base as "royalties" did not meet the definition of the term as articulated by the Michigan Supreme Court in *Mobil Oil Corp v Dep't of Treasury*, 422 Mich 473; 373 NW2d 730 (1985). The hearing referee found in favor of defendant, holding that "intangible property income" calculated under federal tax law was not equivalent with "royalties" under Michigan tax law, and that plaintiff "provided insufficient evidence demonstrating that the income subtracted as royalties from the company's SBT base actually met the definition of the term as set forth" by the Michigan Supreme Court. On October 7, 2008, defendant issued plaintiff a Bill of Taxes Due, which plaintiff paid in full under protest on December 17, 2008.

Plaintiff filed suit seeking a refund of the funds paid under protest. Both parties sought summary disposition. The Court of Claims found in favor of defendant, noting that plaintiff had not demonstrated that the amount at issue was "an actual amount that it received in compensation for the use of a patent."

II. ANALYSIS

Plaintiff alleges that the Court of Claims erred by granting summary disposition for defendant. We review a trial court's grant or denial of summary disposition de novo to determine if the moving party was entitled judgment as a matter of law. *International Business Machines v Dep't of Treasury*, 220 Mich App 83, 86; 558 NW2d 456 (1996). We also review issues of statutory interpretation de novo. *Wexford Med Group v Cadillac*, 474 Mich 192, 202; 713 NW2d 734 (2006).

To determine their tax base under the SBT Act, after starting from the amount of their total taxable income businesses are required to "Deduct the following, to the extent included in arriving at federal taxable income: . . . [a]ll royalties." MCL 208.9(7)(c). The term "royalties" is not defined within the SBT Act, but has been defined by our Supreme Court in *Mobil Oil Corp v Dep't of Treasury*, 422 Mich 473, 485; 373 NW2d 730 (1985) as "payment received by the transferor in patent, copyright, mineral, and oil and gas transactions[.]" (emphasis omitted). Therefore, plaintiff was entitled to deduct from its SBT tax base all payments it received for its patents, to the extent that they had been included as taxable income for federal tax purposes.

To determine the amount of its royalties, plaintiff employed a federal tax code method of determining "intangible property income." Federal tax law defines "intangible property income" as "gross income of a corporation attributable to any intangible property[.]" 26 USC 936(h)(3)(A). Intangible property is defined as including, among other things, "patent, invention, design, pattern or know-how[.]" 26 USC 936(h)(3)(B)(i). Plaintiff argues that "intangible property income" is another name for royalties. Defendant responds that although royalties fall under the umbrella of "intangible property income," the latter term also includes items that could not be considered royalties. We need not resolve this legal question, however, because plaintiff claims that the amount it subtracted consisted entirely of payments it received for the use of its patents, which both parties agree would constitute royalties under Michigan

law. The only question then is whether plaintiff met its burden of supplying evidence to support its factual contention.

In response to defendant's motion, plaintiff provided the trial court with affidavits from persons involved in the preparation of plaintiff's tax returns who averred that the entirety of the relevant of the income it deducted under MCL 208.9(7) did in fact derive from its subsidiary's use of plaintiff's patents.¹ Although it may be possible to have federal "intangible property income" that is not derived from royalties under Michigan law, the record evidence shows that plaintiff deducted only true royalties. Because plaintiff provided evidence to support its argument that the subtractions it made were proper, the trial court erred by granting summary disposition in favor of defendant. Further, because defendant has not provided any evidence to counter that produced by plaintiff, plaintiff is entitled to summary disposition.

Reversed and remanded for entry of judgment for plaintiff. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Donald S. Owens
/s/ Douglas B. Shapiro

¹ It is not clear to what degree the profit split method produces a different result than would be reached by an actual calculation of the royalties received by plaintiff. However, that question is irrelevant in this case where there is uncontroverted evidence that *all* income received by plaintiff from PPI consisted of royalties. MCL 208.9 requires the deduction of royalties "to the extent included in arriving at federal taxable income," and the evidence shows that plaintiff deducted the same amount in royalties from its SBT tax base as it had included in its federal taxable income.